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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re O.A., a Person Coming Under the
Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

J.T.,

Defendant and Appellant.

G057387

(Super. Ct. No. 17DP1380)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jeremy D. Dolnick, Judge. Affirmed in part and remanded with instructions.

Michelle E. Butler, under appointment by the Court of Appeal, for
Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Jeannie Su,
Deputy County Counsel, for Orange County Social Services Agency.

* * *

J.T. (Mother) appeals from the juvenile court's order terminating her parental rights and placing her minor child (O.A.) for adoption. Mother contends Orange County Social Services Agency (SSA) did not properly notify her about the contested Welfare and Institutions Code, section 366.26 hearing at which her parental rights were terminated (all further citations are to the Welfare and Institutions Code). We conclude Mother forfeited the claim and if not forfeited, any error was harmless. Mother also contends the trial court abused its discretion in denying her trial counsel's motion to continue the hearing. We conclude no good cause was shown for a continuance. Finally, Mother contends the trial court erred in determining the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.) did not apply because, among other reasons, the required ICWA notices misstated and misspelled the last names of the child, the father and the possible Indian grandmother. Because the record is insufficient to determine whether, among other facts, the last names were misspelled, we will remand the matter to the juvenile court to determine whether SSA complied with ICWA notice requirements. Accordingly, we affirm in part and remand for further proceedings.

I

FACTUAL AND PROCEDURAL BACKGROUND

On December 18, 2017, days after O.A.'s birth, the child was taken into protective custody. The following day, SSA filed a petition under section 300, subdivision (b)(1), alleging the parents failed to protect O.A. In the petition, O.A. is referred to using Mother's last name. Father is listed with two different last names. The petition alleged that at the time of O.A.'s birth, Mother tested positive for methamphetamine and amphetamine. Mother self-reported using drugs months before the child's birth, using methamphetamine "socially" since high school, and using methamphetamine twice daily. She also self-reported being "a little bipolar." The petition alleged Mother and Father "do not have a safe or suitable residence for the child. [They] gave inconsistent information about where they lived, including reporting that

they were homeless and had live[d] alongside the Santa Ana River riverbed for the past several weeks or stayed with friends on the riverbed for a week prior to the child's . . . birth."

At the December 20, 2017 detention hearing, Mother and Father were present. Both parents submitted and filed Notification of Mailing Address forms, listing as their mailing address the West Covina home address of a paternal niece. The form stated that SSA and the court "will send all documents and notices to the mailing address provided, until and unless you notify the court or the social worker . . . of your new mailing address" in writing. The juvenile court also orally informed the parents that notices would be sent to the mailing address on file with the court and the parents had to notify the court and SSA of any address change in writing.

The parents also completed and filed Parental Notification of Indian Status forms (ICWA-020). Mother stated in her ICWA-020 that she had no known Indian ancestry. Father stated in his ICWA-020 that he may have Apache ancestry. In response to the juvenile court's questioning, Father stated his mother was an enrolled member of an Apache tribe located in San Antonio, Texas. The court ordered SSA to provide notice to the appropriate tribe and the Bureau of Indian Affairs (BIA). It detained O.A., ordered SSA to provide reunification services, and authorized funds for drug testing.

On December 23, 2017, O.A. was placed with a paternal relative, T.D., who lived in Fontana. On December 28, 2017, Social Worker Maria Cabrera interviewed Father at a paternal niece's West Covina home. Father acknowledged the parents currently did not have a permanent and stable living environment. Father also stated that if he could not reunify with O.A., he would like T.D. to adopt the child. Cabrera also interviewed Mother at the same West Covina home. Mother revealed she has been homeless since July 2017, had been living at the riverbed for a few days, and currently was living in a shelter. Mother agreed with Father that if the parents could not reunify with O.A., she would like T.D. to adopt the child.

On January 2, 2018, Cabrera supervised the first visit between O.A. and the parents at the West Covina residence. T.D. agreed to transport O.A. from her Fontana home to the West Covina home for twice-weekly visits to ease the transportation burden on the parents. The parents agreed to meet with Cabrera on January 12 at the SSA offices to discuss “an update in services and in order to obtain the parents’ signature to submit a referral” for services.

On January 11, 2018, the Notice of Child Custody Proceeding for Indian Child (ICWA-30) was sent to the Bureau of Indian Affairs (BIA), various Apache tribes, and the parents. On the ICWA-30, the paternal grandmother’s last name was listed as “A****ie,” the Father’s last name as “A****e,” and the child’s last name as “A****ie.”

On January 12, 2018, the parents failed to meet with Cabrera as scheduled. When Cabrera called them, they explained they were unable to meet because they were trying to get admitted to the Armory Shelter in Fullerton. Cabrera called the parents on January 16, 17, and 18, but was unable to reach them or leave a message. The parents did not show up for a scheduled January 17 Child and Family Team Meeting.

On January 16, 2018, T.D. informed Cabrera that O.A. was treated for syphilis. T.D. also stated the parents texted her on January 12 and 15 to ask about the child, but had not visited the child since the first supervised visit with Cabrera. According to T.D., Father called on January 22, 2018 to schedule a visit, but he never showed up.

In January 2018, Cabrera requested and obtained Mother’s mental health records. The record showed that in December 2013, Mother was diagnosed with “Bipolar I Disorder, Personality Disorder NOS, Amphetamine Abuse, Cannabis Abuse, and Observation of other suspected mental condition.” At the time, Mother had reported she was currently homeless and had been homeless “on and off for many years.” She also disclosed she had “a substance abuse problem, on and off, since she was 13 years

old,” had “attempted suicide ‘plenty of times,’” and was not taking her prescribed medication, which included Lithium and Risperdal.

The January 25, 2018 jurisdiction and disposition report listed both parents’ addresses as “Unknown, Unknown [¶] Orange, CA.” In the report, SSA stated the parents had visited O.A. on only one occasion and had not engaged in any of the recommended services. In addition, Cabrera has been unable to communicate or locate them since January 12, 2018.

Mother was present at the January 25 pretrial hearing. Cabrera described Mother’s appearance as “dirty and unkempt” and emitting a “profound odor” as if she had not showered for several days. Mother reported she and Father had stayed with her mother for several days, but left due to disagreements. She could not provide a current address. Mother disclosed Father had been arrested the previous day on outstanding warrants.

At the March 1, 2018 jurisdiction and disposition hearing, the parents and their counsel were present, with Father in custody. Mother filed a Notification of Mailing Address form listing her address as the Extended Stay America Hotel in Cypress. The juvenile court sustained an amended petition under section 300, subdivisions (b) [failure to protect] and (g) [no provision for support], declared the child a dependent, and removed custody from both parents. The court ordered case plans and visitation for both parents. It informed the parents about the provisions of section 366.26 and that their parental rights may be terminated.

The August 30, 2018 status review report listed the address and contact information of both parents as “Whereabouts Unknown.” The report also stated that during the six-month reporting period, the parents did not maintain contact with their assigned social worker, participate in their case plans or visit the child. The report also noted that all but two notified Apache tribes had responded to the ICWA notice, and the

tribes had denied the child's eligibility for membership. The time for the last two tribes to respond had expired.

At the August 30, 2018 six-month review hearing, the court continued the matter to October 9, 2018, for another six-month review hearing. The court also found, based on a signed stipulation, that ICWA did not apply.

Social Worker Carola Roel sent notice of the October 9 six-month review hearing date to Mother at the Extended Stay America address and Father at the West Covina address. Both parents' notices were returned as "unclaimed." Roel also spoke with T.D., who informed Roel the West Covina home belonged to a relative and Father did not live there.

The parents did not show up for the October 9, 2018 six-month review hearing. Both parents' counsel asked the court to continue the case so they could find their clients. The court denied a continuance, finding no good cause because the parents had been absent for at least six months. It again found ICWA did not apply. The court terminated reunification services and set a section 366.26 hearing for February 6, 2019, with a notice review hearing for November 19, 2018. It ordered SSA to provide notice of the section 366.26 hearing and to prepare a section 366.26 assessment. It also ordered the court clerk to send written advisements to the parents at the addresses on file (the Extended Stay America address and the West Covina address).

Social Worker Janet Carrete completed declarations of due diligence detailing her unsuccessful search to find Father and Mother. Among other efforts, she sent notice of the section 366.26 hearing by certified mail to Mother at the maternal grandmother's address, but did not receive an acknowledgement of receipt. Carrete later spoke with the maternal grandmother, who stated she did not know where Mother was or how to contact her. Carrete also spoke with T.D., who stated her last contact with Mother and Father was in January 2018. T.D. also stated she did not know any other family members or friends who could help locate the parents.

At the November 19, 2018 notice review hearing, the court found SSA exercised due diligence in its efforts to locate and notify the Mother. It ordered notice through counsel. The court found that “Counsel for mother objects to .26” and “Counsel for father objects to .26 and object[s] to notice through counsel.” It continued the notice review hearing to December 6, 2018.

On December 4, 2018, SSA served notice of the section 366.26 hearing on Mother care of her trial counsel at her courthouse mailbox. The court later continued the matter to allow completion of notice to Father. On January 3, 2019, SSA served notice of the section 366.26 hearing on Father via his trial counsel.

The section 366.26 report recommended the juvenile court find the child adoptable and terminate parental rights. According to the report, the child was “thriving” with T.D. and her husband and had developed a “strong, positive attachment” to them. They had cared for the child since she was eight days old, and were “willing and wanting to adopt” if reunification failed. Both parents’ whereabouts were unknown and they had visited the child only once, on January 2, 2018.

At the February 6, 2019 section 366.26 hearing, neither parent appeared. Mother’s counsel requested a continuance. Counsel stated: “I had a very long conversation with Mother on October 9th, 2018 after court. She wasn’t present during court, but at about 2:00 she came to speak with me. [¶] She’s happy with placement. Sadly, she’s homeless, and she struggles with mental illness as well as addictions. She said she was very sad that she wasn’t going to be able to do much for the child, but she always wanted to know that this child was wanted, and that this child was loved, and that she wishes she could do more. [¶] I’m asking for a continuance. Mother has not been present. I can’t make any guarantees that if given more time, she would be present.” Father’s counsel also requested a continuance.

The court denied the motions to continue. It noted both parents had failed to report to court in several months, and they also had failed to report to SSA. It found

neither parent had visited with the child since at least January 2018, which was over a year ago. The court found the parents had received proper notice. It also found that notice of the hearing was given to the BIA and all appropriate tribes as required under ICWA, and that ICWA did not apply. It ordered parental rights terminated and the child placed for adoption.

Mother's trial counsel filed a timely notice of appeal on her behalf. Father did not appeal.

II

DISCUSSION

A. Notice

Mother contends the juvenile court erred in determining SSA properly notified her and O.A.'s grandmother of the section 366.26 hearing. SSA asserts Mother forfeited the alleged notice errors because her attorney never objected to the notice finding. If not forfeited, SSA argues any notice error was harmless. We agree with SSA.

Section 294 specifies the necessary procedures for service of the notice for a section 366.26 hearing. Subdivision (f) of section 294 describes seven methods by which notice of a section 366.26 hearing may be given to a parent, including, service on a parent's attorney if the whereabouts of the parent is unknown and there first has been due diligence in attempting to locate and serve the parent. (§ 294, subd. (f)(7)(A).)

Additionally, if the parent's whereabouts are unknown, SSA is required to provide notice of a section 366.26 proceeding to the grandparents of the child, if their address is known. (§ 294, subd. (a)(5).) Nonetheless, a parent can forfeit any deficiencies in providing statutory notice by failing to raise them in the juvenile court. (*In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1152 [failure to object to inadequate notice forfeited claim on appeal].)

Here, at the November 19, 2018 notice review hearing, the juvenile court found SSA exercised due diligence in its efforts to locate and notify the Mother. It

ordered notice through counsel. Mother's counsel failed to object to the due diligence finding or to notice through counsel. At the contested section 366.26 hearing, the juvenile court made a finding that notice had been given. Mother's counsel again raised no objection to the notice provided in this case. Counsel never argued the notice to Mother or the maternal grandmother was defective or that there had been any violation of due process. Accordingly, Mother forfeited any claimed error in the notice.

In any event, even assuming Mother did not forfeit the issue and notice to her and the maternal grandmother was deficient, we conclude any deficiency was harmless. (*In re A.D.* (2011) 196 Cal.App.4th 1319, 1325 (A.D.) ["a failure to give notice in dependency proceedings is subject to a harmless error analysis"].) Even if Mother or the maternal grandmother had attended the section 366.26 hearing, the evidence compelled the juvenile court to rule as it did.

At the section 366.26 hearing, the juvenile court must first determine whether the child is likely to be adopted. (§ 366.26, subd. (c)(1).) If a dependent child is likely to be adopted, the preferred plan is adoption and the juvenile court is *required* to terminate parental rights unless a statutory exception to adoption exists. (§ 366.26, subds. (b), (c)(1); *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1341-1342.) Mother does not contest the sufficiency of the evidence to support the juvenile court's adoptability finding, and the record amply supports the court's finding. The fact that a prospective adoptive family is willing to adopt the child is evidence the child is likely to be adopted by that family or some other family in a reasonable time. (*In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154.) Here, O.A.'s caretakers informed SSA they were willing and eager to adopt the child.

Because O.A. was likely to be adopted, it was Mother's burden to show that termination of parental rights would be detrimental under one of the statutory exceptions to adoption set forth in section 366.26, subdivision (c)(1)(B). (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 809.) She failed to present any argument or evidence on detriment.

In any event, the only potentially applicable exception in this case would have been the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) based on (1) a parent's regular visitation and contact with the child and (2) the benefit the child would receive from continuing the relationship. The evidence in the record, however, showed Mother visited the child only once, more than a year before the section 366.26 hearing. Under these circumstances, Mother stood no chance of prevailing on a detriment argument. Thus, any error in notice was harmless beyond a reasonable doubt. (See *In re Angela C.* (2002) 99 Cal.App.4th 389, 393 [defect in notice of continued section 366.26 hearing was harmless beyond a reasonable doubt when evidence unequivocally showed that parental rights should have been terminated].)

Mother's reliance on *In re Jasmine G.* (2005) 127 Cal.App.4th 1109 (*Jasmine G.*) is misplaced. In *Jasmine G.*, this court did not have the benefit of the Supreme Court's later ruling in *In re James F.* (2008) 42 Cal.4th 901. Following the Supreme Court's ruling, this court issued *A.D., supra*, 196 Cal.App.4th 1319, in which we concluded any notice error was subject to harmless error analysis. As noted, we conclude any notice error in the instant matter was harmless beyond a reasonable doubt. In addition, in *Jasmine G.*, there was a complete failure to make any attempt to give notice. (*Id.*, 127 Cal.App.4th at p. 1116.) In contrast, here the court clerk sent written notice to the address on file with the court and SSA mailed a notice to the maternal grandmother's address. (See *In re Jennifer O.* (2010) 184 Cal.App.4th 539, 549 ["The statutory scheme places on the parent the responsibility of keeping [SSA] apprised of his or her current mailing address, so that mailed notices do not go awry."].) A social worker also spoke with the maternal grandmother and the child's caretaker in an attempt to locate and notify Mother. In short, *Jasmine G.* is legally and factually distinguishable.

B. Continuance

Mother contends the trial court abused its discretion in denying a motion to continue the section 366.26 hearing. Section 352, subdivision (a), provides that the

juvenile court may continue any hearing if it is not contrary to the interest of the minor. The statute also states: “Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for continuance.” (§ 352, subd. (a).) “In considering a request for a continuance, the court must ‘give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.’ [Citation.] We reverse an order denying a continuance only on a showing of abuse of discretion.” (*In re J.I.* (2003) 108 Cal.App.4th 903, 912.)

Here, there was an insufficient showing of good cause. Mother’s counsel’s only reason for a continuance was to permit more time to locate the Mother. But counsel did not provide any information on how or when Mother could be contacted. Moreover, counsel admitted, “I can’t make any guarantees that if given more time, she would be present.” As the juvenile court noted, Mother was absent for several months and failed to maintain contact with SSA or the court. In addition, the child was thriving with her caretakers, who were eager to adopt her. On this record, there was no evidence of good cause for a continuance. The juvenile court did not abuse its discretion in denying the continuance.

In any event, even if the juvenile court erred, Mother has failed to meet her burden of showing the denial of a continuance was prejudicial. As we explained, Mother has not challenged the court’s adoptability finding on appeal and the record does not support a finding that adoption would be detrimental to the child. Accordingly, even if we assume the juvenile court erroneously denied Mother’s counsel’s request for continuance, the court’s error was harmless.

C. ICWA

Finally, Mother contends the trial court erred in determining SSA complied with the notice requirements of ICWA because, among other reasons, the ICWA notices

misspelled the last names of the child, Father and maternal grandmother. SSA concedes the ICWA notices *may* not have contained the correct last names of the child, Father and maternal grandmother. SSA urges this court to remand the matter for the limited purpose of determining whether SSA complied with ICWA. We will remand the matter to the juvenile court for the limited purpose of ensuring ICWA compliance. (See *In re Nikki R.* (2003) 106 Cal.App.4th 844, 855-856.)

III

DISPOSITION

The judgment terminating parental rights is reversed and the matter is remanded to the juvenile court with directions to conduct further proceedings to determine whether SSA complied with the notice provisions of ICWA. If not, the juvenile court shall direct SSA to comply; if O.A. is determined to be an Indian child, a new hearing shall be held. If notice is found to be sufficient, all previous findings and orders shall be reinstated, subject to the juvenile court's consideration of any circumstances that may have arisen during this appeal that may affect the outcome.

ARONSON, J.

WE CONCUR:

O'LEARY, P.J.

BEDSWORTH, J.